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**IN THE
COURT OF APPEALS OF INDIANA**

PERRY L. HICKS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 91A02-0802-CR-80
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE WHITE SUPERIOR COURT
The Honorable Robert B. Mrzlack, Judge
Cause No. 91D01-0708-FA-112

May 30, 2008

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Perry L. Hicks appeals the sentence imposed by the trial court after Hicks pleaded guilty to Child Molesting,¹ a class A felony, arguing that the trial court abused its discretion in imposing the sentence and that the sentence is inappropriate in light of the nature of the offense and Hicks's character. Finding that Hicks has waived his right to appeal his sentence, we affirm.

FACTS

In September or October 2006, forty-nine-year-old Hicks had sexual intercourse with A.B., who was under the age of fourteen at the time. Subsequently, thirteen-year-old A.B. gave birth to Hicks's child.

On August 16, 2007, the State charged Hicks with class A felony child molesting. On November 14, 2007, Hicks pleaded guilty as charged in exchange for the State's agreement to forego charging Hicks with being a habitual offender. The plea agreement left sentencing entirely to the discretion of the trial court and provided that Hicks "waives his right to appeal any sentence imposed by the trial court that is within the range set forth in the plea agreement. Further, the Defendant knowingly, intelligently and voluntarily waives his right to challenge the sentence on the basis that it is erroneous." Appellant's App. p. 9.

Following the December 19, 2007, sentencing hearing, the trial court found Hicks's guilty plea to be a mitigating factor. It found Hicks's criminal history, which includes class C felony criminal confinement, class D felony child molesting, and four other felony

¹ Ind. Code § 35-42-4-3(a)(1).

convictions, the fact that a child was born to the victim as a result of Hicks's crime, the fact that Hicks was in arrears on child support payments for his three children, and the fact that he was on probation at the time he committed the instant offense, as aggravating factors. Finding that the aggravators outweighed the mitigators, the trial court sentenced Hicks to a maximum sentence of fifty years imprisonment. It then informed Hicks that he had a right to appeal the sentence and appointed an attorney to represent him on appeal. Hicks now appeals.

DISCUSSION AND DECISION

During the pendency of this appeal, our Supreme Court decided the precise issue we are faced with herein. In Creech v. State, the court held that "a defendant may waive the right to appellate review of his sentence as part of a written plea agreement." 35S02-0709-CR-376, ---N.E.2d--- (Ind. May 21, 2008). Furthermore, here and in Creech, the trial court erroneously advised the defendant at the end of the sentencing hearing that he had the right to appeal. But our Supreme Court concluded that "[b]eing told at the close of the hearing that he could appeal" had no effect on the defendant's prior decision to plead guilty and was therefore not a reversible error. Slip op. p. 6. Thus, pursuant to Creech, we find that Hicks's waiver of his right to a direct appeal of his sentence was valid² and we decline to address his substantive arguments regarding the sentence imposed by the trial court.

The judgment of the trial court is affirmed.

NAJAM, J., and BROWN, J., concur.

² Hicks does not argue that his waiver was not knowingly and voluntarily made.